IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(SPECIAL ORIGINAL JURISDICTION)

Monday, the thirteenth day of September, two thousand and four

Present:

THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No. 6137 OF 2002

Between:

G.Rama Raju S/o Subba Raju, aged about 41 years, R/o 23-27-70, Challapallivari Street, Mutyalampadu, Satyanarayanapuram, Vijaywada.

Petitioner

And

1. The Government of Andhra Pradesh, rep. by its prl. Secretary, Higher Education Department, Secretariat Buildings, Hyderabad.

2. The Commissioner and Director of Intermediate Education, Andhra Pradesh, Nampally, Hyderabad.

Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction more in the nature of Writ of Mandamus declaring the action of the 1st respondent in rejecting the request of the petitioner for admission into grant-in-aid and for directing the management to continue him in service as junior lecturer in economics at PBPR College, Edupugallu, Krishna District vide GORt.No.246 Higher Education (CE.III) Dept., dt.20/3/2002 as illegal, arbitrary and discriminatory and violtive of Article 14 of the Constitution of India and against various G.Os., issued by the 1st respondent more particularly G.O.Ms.No.1319 Education (CE) Dept., dt.14-9-

1988, G.O.Rt.No.1573 Education (CE.II) Dept., dt. 24.11.1987 and G.O.Ms.No.328 Education (CE.II) Dept., dt. 15-12-1997 after calling from the records and consequently direct the respondents to admit the petitioner into grant-in-aid w.e.f. 1-11-1998 the date on which the 2nd respondent admitted the similarly placed persons through procdgs., dt.27-3-2000 as junior lecturer in economics at PBPR. College, Edupugallu, Krishna District, with all consequential benefits like payment of arrears of salary.

For the Petitioner: Mr. P.V.S.S.S.Rama Rao, Advocate

For the Respondents: Govt. Pleader for Higher Education.

The Court made the following :

ORDER:

The petitioner questions the orders of the Government issued in G.O.Rt.No.246, Higher Education (CE-III) Department, dated 20-03-2002 in refusing to admit him into grant-in-aid as Junior Lecturer in Economics and in not directing the management of Private Aided P.B.P.R., Junior College, Edupugallu of Krishna District to continue him in service as Junior Lecturer, as illegal, arbitrary and violative of Article 14 of Constitution of India.

The petitioner passed M.A., Economics in Second division with 56% of marks from Andhra University in the year 1983. He also passed M.A., Public Administration and LL.B., from Nagarjuna University. On the application of Rajiv Gandhi Educational Academy, Edupugallu, Krishna District to accord permission to start a private Junior College at Edupugallu, the Government accorded sanction vide G.O.Ms.No.378, Education (J) Department, dated 12-9-1983 to open a Government College, subject to fulfillment of certain conditions. Aggrieved by the issuance of the said Government Order, permitting to open a Government Junior College, Rajiv Gandhi Educational Academy filed W.P.No.11218 of 1983, which was allowed by this Court on 1-12-1987 and consequently, the Government issued orders in G.O.Ms.No.7, Education (CE-II) Department, dated 19-1-1990, permitting to open a Private Junior College at Edupugallu of

Krishna District by the said Academy from the academic year 1983-84 subject to fulfillment of certain conditions and also accorded expost facto permission. Some of the conditions are that the management should get the affiliation of Intermediate Board fulfilling the conditions laid down in G.O.Ms.No.306, Education Department, dated 19-7-1983. The appointment of the teaching staff prior to the commencement of A.P. College Service Commission shall be done by the Selection Committee. On and from the date of commencement of A.P., College Service Commission i.e., from 1-10-1985 all the existing vacancies as on that day and the vacancies that arose would arise after that day shall be filled by the recruitment through A.P., College Service Commission only by following the rule of reservation. The college shall get the list of candidates selected for appointment, approved by the Board of Intermediate Education within one month from the date of selection. Any appointment made without selection by the Selection Committee and without proper approval of the Board of Intermediate Education shall not be valid etc.

The petitioner was appointed as Junior Lecturer on temporary basis for the academic year 1985-86 by appointment order of the College Management dated 4-7-1985 and by order dated 6-7-1986, his previous appointment order dated 4-7-1985 is continued until further orders subject to the approval of the Director of Higher Education. Since, then, the petitioner continuously worked till 12-6-2000.

The P.B.P.R., Junior College, Edupugallu of Krishna District was subsequently admitted to grant-in-aid with effect from 1-11-1998 vide orders in G.O.Ms.No.230, Higher Education Department dated 4-8-1999, and accorded sanction for admitting certain posts of the teaching as well as non teaching staff. One of the post that was sanctioned is the Junior Lecturer in Economics. It is stated that while sanctioning the posts to the said Junior College, the petitioner was not admitted to grant-in-aid for the post of Junior Lecturer in Economics by the proceedings of the Commissioner and Director of Intermediate Education, dated 27-3-2000 in Rc.No.2559/JC.9-3/99.

It is stated that while admitting the similarly situated persons who are working as Junior Lecturers in Zoology, Commerce, History, Telugu, Civics, Physics and Botany, the petitioner was not admitted to grant-in-aid with effect from 1-11-1988. Accordingly, the petitioner made a representation before the Commissioner and Director of Intermediate Education to approve his appointment and to admit his services into grant-in-aid and as the said representation was not considered, he filed W.P.No.10056 of 2000, which was disposed of by a learned Single Judge of this Court on 18-9-2000, without expressing any opinion on merits of the case, the Commissioner and Director of Intermediate Education was directed to consider the representation of the petitioner dated 29-5-2000 and dispose of the same.

The second respondent vide his proceedings Rc.No.G1/2559/99, dated 27-10-2000, considered and rejected the representation of the petitioner, stating that the various Government Orders referred to by the petitioner are not relevant to his case as the initial appointment of the petitioner itself was irregular and it was not done by a duly constituted selection committee as contemplated in G.O.Ms.No.905, Education Department, dated 21-9-1976. Aggrieved by the same, the petitioner filed a revision petition dated 9-11-2000. The Government examined his revision petition for regularization of his appointment as Junior Lecturer in the aided post in PBPR., Junior College, Edupugallu of Krishna District and rejected the same vide order in G.O.Rt.No.246, Higher Education (CE-III) Department, dated 20-3-2002, which is impugned in this writ petition.

It is the case of the petitioner that B.Veeraiah Chowdary, K.Gopala Krishna, M.Aruna Babu were also appointed in between 4-7-1985 to 30-9-1985 like the petitioner, who joined duty on 6-7-1985, but those persons who are working as Junior Lecturers in History, Telugu and Civics were admitted into grant-in-aid, whereas, the petitioner was not admitted to grant-in-aid and therefore, the action of the respondents is discriminatory. When the Government admitted the posts to grant-in-aid, the action of the second respondent in not admitting the persons who are working in the respective subjects as Junior

Lecturers is illegal. It is further stated that similar orders were issued by the Government in the case of MVGRR College, Battiprolu of Krishna District for starting a Private Degree College, which was started on 1-12-1983 and the teaching staff and non teaching staff were appointed by the management with effect from 1-12-1983 with qualified persons and most of them were continuing in service and as it was not possible to recruit the staff by the selection committee as stipulated in G.O.Ms.No.544, Education Department, dated 23-12-1985 permitted the said college into grant-in-aid, and also accorded expost facto approval for opening a private degree college. Since the G.O., was issued retrospectively with effect from 1983-84, the Government granted exemption as a special case, ratifying the action of the management in making such appointment, vide orders in GO.Rt.No.1573, Education (CE-II) Department, dated 24-11-1987. The petitioner submits that the benefit of the said G.O., shall be equally applicable to the staff of PBPR., Junior College, Edupugallu of Krishna District.

It is further stated that the Government issued number of orders regularizing the services of the part time lecturers who were appointed without following the procedure prescribed in G.O.Ms.No. 905, Education Department, dated 21-9-1976. The Government has considered several cases of similarly situated persons, but they have chosen to reject the case of the petitioner without any justification what-so-ever. When the selection procedure was relaxed in the cases of certain similarly situated Junior Lecturers, there is no justification on the part of the respondents in not considering the case of the petitioner for approving his post by relaxing the selection procedure. It is further stated that the Government issued orders in G.O.Ms.No.527, Education Department, dated 10-12-1984 to fill-up all the future vacancies by Public Service Commission only and accordingly, the Director of Higher Education issued instructions on 24-12-1984 to all the managements/private colleges not to fill up any vacant post or posts that may arise in future by following the procedure as laid down in G.O.Ms.No.905, Education Department,

dated 21-9-1976. Later on, the Government vide its Memo dated 23-6-1986 clarified that after 1-10-1985, the recruitment has to be done by the College Service Commission only. Thus, it is stated that certain appointments which were made by following the procedure in G.O.Ms.No.905, dated 21-9-1976 during 24-12-1984 to 30-9-1985 and the managements have requested to approve such of those appointments and accordingly, the Government issued orders in G.O.Rt.No.1319, Education (DE) Department, dated 14-9-1988 authorising the Director of Higher Education to approve the appointments made by the managements in the private aided colleges in between the period from 24-12-1984 to 30-9-1985, provided, the appointments are made as per rules. It is stated that the petitioner who was appointed by the College Management as per rules and therefore, his appointment also is liable to be approved. It is further stated that there was no embargo for the management to make such appointments from 24-12-1984 to 30-9-1985 and therefore, the Government issued orders in G.O.Rt.No.1319, Education Department, dated 14-9-1988 to approve the appointments made between 24-12-1984 to 30-9-1985 and the said directions are equally applies to the post of the petitioner as Junior Lecturer. It is stated that the proceedings of the second respondent dated 27-3-2000 rejecting the case of the petitioner on the ground that he was not selected through properly constituted selection committee is illegal as there was no selection committee during the period of his appointment. The petitioner placed several orders of the Government, which were issued to ratify the appointments made without following due procedure and to admit them to grant-in-aid and some of the Government Orders are: (1) G.O.Rt.No.525, Higher Education (CE-II-1) Department, dated 7-7-2001, (2) G.O.Rt.No.933, Higher Education (CE-II) Department, dated 15-12-2001, (3) G.O.Rt.No.30, Higher Education (CE-II.1) Department, dated 19-1-2002, (4) G.O.Rt.No.162, Higher Education Department, dated 2-3-2002 and (5) G.O.Rt.No.186, Higher Education (CE-II) Department, dated 7-3-2002 etc.

It is further stated that the Management of PBPR Junior College dispensed with his services with effect from 12-6-2000, against which he filed an appeal before the second respondent on 16-6-2000, but the second respondent without speaking anything about the said action of the management, rejected his appeal and the Government also vide its rejection orders in G.O.Rt.No.246, dated 20-3-2002 did not consider the action of the management in dispensing with his services, but only considered the revision as regards to the approval of his appointment and admitting to grant-in-aid post alone. It is stated that once his appointment is approved and admitted to grant-in-aid, he is entitled to continue in service without reference to the action of the management in not allowing him to attend the college from 12-6-2000. It is further submitted that as per the orders issued by the Government in G.O.Ms.No.328, Education (CE-II) Department, dated 15-10-1997, the persons who are working as Junior Lecturers/part time lecturers in private aided degree as well as junior colleges are liable to be regularized. It is stated in the Government orders that Part Time Junior College Lecturers who have possessed P.G. Degree not less than 50% of marks in the relevant subjects and who have completed five academic years as on 25-11-1993 are entitled for regularization of their services and accordingly orders were issued to all the concerned to pass orders for regularization of their services within a period of six months.

On the other hand, the learned Government Pleader for Higher Education contended that pursuant to the orders of the Government in G.O.Ms.No.230, Higher Education (CE-III) Department dated 4-8-1999, admitting the college into grant-in-aid, the second respondent issued orders admitting seven qualified teaching and six non teaching posts into grant-in-aid vide his proceedings dated 27-3-2000 and the name of the petitioner was shown in in-eligible list (Annexure-II) as his initial selection was not made through the properly constituted selection committee. As per the guidelines issued by the Government in G.O.Ms.No.905, Education, dated 21-9-1976 read

with G.O.Rt.No.1319, Education dated 14-9-1988, all the teaching posts in Private Junior Colleges should be filled by duly constituted selection committee for the purpose of appointments, approval and admission to grant-in-aid. The persons admitted to grant-in-aid are appointed by duly constituted selection committee, therefore, it is incorrect to state that their appoints were also made similarly to that of the petitioner. In so far as the contention of the petitioner relating to the ratification of the appointment made by the management of MVGRR Degree College, Bhattiprolu, Guntur District in G.O.Rt.No.1573, dated 24-11-1987 is concerned, it is stated that it pertains to the degree college, which is under the administrative control of Director of Collegiate Education. However, it is clearly stated in the Government Order that the Government considered it as a special case and therefore, the said orders will not become a precedent to other cases in future. It is further stated that the scheme formulated by the Government in G.O.Ms.No.328, Education Department, dated 15-12-1997 is not applicable to the instant case as the scheme formulated was applicable for regularization of services who worked against the sanctioned aided vacancies. More over, the said G.O., was automatically stands annulled after expiry of six months from 15-7-1997. But, whereas the Junior College, in which the petitioner worked was admitted to grant-in-aid after expiry of six months i.e., on 4-8-1999 vide G.O.Ms.No.230. It is further stated that as per the orders issued in G.O.Rt.No.1319, Education (CE) Department, dated 14-9-1988, to approve the appointments made by the managements for the period between 24-12-1984 to 30-9-1985 are applicable to the cases whose appointments were made by a properly constituted selection committee, but not in respect of the appointments made by the managements. The petitioner is not in service of the said college even according to the admission of the petitioner with effect from 12-6-2000, which fact was also reported by the Secretary and Correspondent of the college in his letter dated 23-10-2000. The contention of the petitioner that the Government failed to consider the case of the petitioner with reference to similarly situated persons whose cases were ratified though they were

irregularly appointed by the managements of the degree colleges, but the said contention is untenable as those ratifications were made in respect of the degree colleges, but not in respect of the Junior Colleges. It is further stated that the cases of (1) P.Lakshminarayana (2) T.Satyanarayana, (3) D.Siva Rama Krishna Rao, (4) M.Aruna Babu, (5) K.Gopala Krishna and (6) B.Veeraiah Chowdary were all appointed by a properly constituted selection committee and therefore, the petitioner is not entitled for any relief.

I have perused the relevant records and the said records goes to show that while admitting the un-aided private PBPR., Junior College to grant-in-aid vide G.O.Ms.No.230, Higher Education (CE-III) Department, dated 4-8-21999 with effect from 4-8-1998, the teaching staff of one post of Principal, three posts English, one post of Telugu, two posts of Sanskrit, two posts of Mathematics, one post of Botany, one post of Zoology, two posts of Physics, two posts of Chemistry, one post of Civics, one post of Commerce, one post of Economics, one post of History and one post of Hindi of the teaching staff were admitted to grant-in-aid. Pursuant to the said orders, the Commissioner and Director of Intermediate Education vide proceedings dated 27-3-2000, admitted seven members of the teaching staff alone who were appointed in between the period from 24-11-1984 to 30-9-1985 duly approved as per the orders in G.O.Rt.No.1319, Education Department, dated 14-9-1988 admitting them into grant-in-aid with effect from 1-11-1988. It is stated that those seven members of the teaching staff were appointed by a properly constituted selection committee, but whereas the petitioner was not selected through a properly constituted selection committee. Similarly, the case of one K.S.R.Acharyulu, Junior Lecturer in Sanskrit was also not admitted to grant-in-aid as he was not selected through a properly constituted selection committee. The cases of G.Ram Baby, Junior Lecturer in English, U.Sharada, Junior Lecturer in Chemistry, V.R.C.Kashyap, Junior Lecturer in Maths, K.V.Narayana Rao, Physical Director and K.Nageswara Raju Librarian were not admitted to grant-in-aid as the Board of

Intermediate Education has not approved their appointments. Therefore, it is stated that the petitioner is not at all discriminated and he is not entitled for any special treatment.

The contention of the petitioner that the cases of similarly situated persons who were also appointed by the management and not by a properly constituted selection committee were considered and admitted them to grant-in-aid is incorrect as the record shows that their appointments were made through a properly constituted selection committee, though there was no need for selection by any properly constituted selection committee during the relevant period. The petitioner has failed to place any material to show that the cases of the persons whose appointments were not made by a duly constituted selection committee was also approved and admitted to grant-in-aid. But the Government while rejecting the case of the petitioner has not considered the contention of the petitioner as regards to the several orders issued by the Government relaxing the selection procedure. Therefore, I am of the view that it is just and proper to remand the matter to the Government for reconsideration of the contention of the petitioner with regard to the relaxation of selection procedure and pass appropriate orders in accordance with law as this Court cannot relax the selection procedure as was done by the Government in several cases.

For the aforesaid reasons, the order of the Government in G.O.Rt.No.246, Higher Education (CE.III) Department, dated 20-3-2002 is set aside and the matter is remitted back to the first respondent so as to enable the Government to pass appropriate orders in accordance with law, after hearing the petitioner as well as the management of PBPR., Junior College, Edupugallu of Krishna District. The petitioner is also permitted to file a representation afresh enclosing all the relevant Government Orders and other material relied upon by him within two weeks from the date of receipt of copy of this order. The Government may pass appropriate orders as expeditiously as possible within a period of eight (8) weeks from the date of receipt of the representation of the petitioner. The Writ Petition

is accordingly disposed of. No order as to costs.

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V.ESWARAIAH,J

Dt.13-09-2004.

Shr.

Asst. Registrar.

To

1. The principal Secretary to Government of Andhra Pradesh, Higher Education Department, Secretariat, Hyderabad.
2. The Commissioner and Director of Intermediate Education, Andhra Pradesh, Nampally, Hyderabad.
3. Two CCs., to the G.P., for Higher Education, High Court Buildings, A.P., Hyderabad (OUT).
4. Two C.D. copies.